

MEMORANDUM

TO: Secretary Mike Chrisman
FROM: Mitchell B. Menzer
DATE: February 18, 2005
SUBJECT: CEQA Improvement Advisory Group

I am delighted that the Resources Agency has formed the CEQA Improvement Advisory Group to discuss improvements to CEQA. Thank you for providing the leadership on this important issue.

You asked for suggestions to improve CEQA in order to encourage efficient land use patterns in developing housing and infrastructure while protecting resources. I am pleased to present a number of suggestions here.

In 2001-2002, the Urban Land Institute convened the California Smart Growth Initiative, comprised of a broad-based group of stakeholders to study state-level barriers to smart growth. ULI published its report, entitled "Putting The Pieces Together," which proposes improving CEQA to promote smart growth. Specifically, the report recommends CEQA reforms to encourage comprehensive planning of undeveloped areas to produce certainty as to where development can occur and where land will be protected as open space or agricultural preserves. The report also recommends expanding exemptions in CEQA for infill development. I have attached the excerpt from the ULI report discussing these recommendations.

In addition to the report's proposals, I also recommend the following:

1. Create an intermediate step between MNDs and EIRs for residential development. Typically, an infill residential or mixed use project is well-suited for an MND because the environmental effects are minimal or can be mitigated. In typical infill developments, the most significant effect is usually traffic and mitigation measures are available. MNDs are relatively inexpensive to complete and can be completed in as little as 60 days. However, MNDs are relatively easy to attack under CEQA. In comparison, EIRs are very time consuming and expensive. Although EIRs are generally upheld in CEQA litigation, EIRs are just as easily challenged in court by a project opponent and the delay, cost and uncertainty of the litigation can represent a significant burden on new development.

Importantly, CEQA requires that an MND mitigate all environmental effects to a level of insignificance. Thus, if the government agency must make a finding of overriding considerations because one or more environmental effects cannot be mitigated, CEQA requires an EIR. If even a single environmental effect cannot be mitigated to a level of insignificance, a MND may not be used and the project must complete a full EIR. The full EIR, of course, requires a complete study, discussion and analysis of all environmental effects, as well as analyses of cumulative impacts, growth inducing impacts and alternatives to the project. Unfortunately, there is virtually no middle ground between the relatively streamlined MND and the time-consuming and expensive EIR.

One solution to this problem would be to create an intermediate step between an MND and an EIR for infill residential projects. The intermediate step could be an MND that permits a finding of overriding considerations as to specific effects, such as traffic. Alternatively, CEQA could permit an EIR that is streamlined and permits a brief discussion of major environmental effects, but excludes growth inducing effects, cumulative impacts and alternatives. Either approach would have the beneficial effect of streamlining CEQA compliance and reducing the cost and time to comply with CEQA for residential projects.

Pub. Res. Code Section 21158.5 authorizes the type of streamlined EIR described above for small projects. However, the requirements for the streamlined, focused EIR are so narrow as to make the focused EIR of little value. The focused EIR under Section 21158.5 is limited to residential projects of less than 100 units. In addition, the project must be consistent with a general plan, specific plan or zoning ordinance that was the subject of an EIR within 5 years. Many general plans, specific plans and zoning ordinances are completed without an EIR. In addition, infill projects often require a zone change or general plan amendment and a focused EIR is not authorized when these approvals are required. Section 21158.5 could be expanded so that it can be of wide application in residential settings.

2. Encourage comprehensive transportation planning under CEQA. I also recommend reforming CEQA so that it encourages comprehensive transportation planning that solves traffic problems. We should consider creating a process in CEQA for local governments to formulate a Master Transportation EIR that would (i) forecast growth for a specific area, (ii) model the traffic impacts from the projected growth, (iii) establish a traffic improvement plan for the entire area, and (iv) devise a means of financing the traffic improvements (including requiring future projects to pay into the improvement fund or otherwise perform mitigation measures). All future projects developed in the study area under the growth forecast would be immune to challenge under CEQA based on transportation effects. This Master Transportation EIR has characteristics of the master EIR concept in CEQA Guideline 15175 and the program EIR concept in CEQA Guideline 15168 but would be more flexible and would overcome some of the defects in those procedures. The Master Transportation EIR should also encourage collaboration between neighboring cities, unincorporated county areas and transportation authorities.

Each project to be developed within the study area would be conclusively deemed to comply with CEQA requirements if it satisfied the requirement to participate in the comprehensive traffic improvement plan. The project would not be required to repeat an individual traffic analysis or address individual mitigation measures. Instead, based on the size of the project (e.g., the number of residential units), the project would complete identified mitigation measures or contribute to a fund that would complete the mitigation measures. Each project within the project area would be immune from CEQA challenge for traffic if it met its required contribution to the comprehensive improvement plan for the study area. Each project might also pay a fee at the time it is built to defray the cost of keeping the master traffic EIR up to date.

M.M.